IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Revision No. 506 of 1995

Date of decision: 30th January, 2008

Sumiti Rekha ... Petitioner

Versus

State of Haryana and another ... Respondent

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Present: Mr. K. K. Aggarwal, Advocate
for the petitioner.

Mr. Anil Kumr Rathee, AAG Haryana
for respondent no.1-State of Haryana.

Mr. A. S. Virk, Advocate
for respondent no.2.

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CORAM: HON'BLE MR. JUSTICE HARBANS LAL

HARBANS LAL, J

This revision is directed against the judgment/order of sentence dated 29.3.1995 rendered by the Court of learned Judicial Magistrate Ist Class, Ambala City, whereby he convicted and sentenced the accused to undergo rigorous imprisonment for six months and to deposit a sum of Rs.10,000/- as fine and in default of the same, to further undergo imprisonment for three months under Section 138 of The Negotiable Instruments Act, 1881 (for short, 'the Act') as well as the judgment dated 14.7.1995 vide which the appeal was dismissed by the Court of learned Sessions Judge, Ambala.

Shorn of all unnecessary details, the facts of the prosecution

case are that on 23.4.1994, Gurpreet Singh, complainant filed a criminal complaint under Section 138 of the Act against accused Sumiti Rekha on the allegation that he had cordial relations with her. In January, 1991, she approached him for a loan of Rs.50,000/- which he agreed to advance. In turn, she agreed to pay interest for the period during which the money would remain with her. On 30.1.1991, he advanced a sum of Rs.50,000/- to her in the presence of Jawinder Singh and other persons. She issued a post dated cheque dated 950824 dated 3.2.1993 in his favour payable at State Bank of India, Model Town, Ambala City, against her Bank Account No. 9389 in the said Bank. The same was duly signed by her. She kept on paying interest on the said amount till August, 1991, when she left Ambala and her whereabouts were not known. In March, 1993, he came to know that she has been arrested in a case under Section 420/406 of I.P.C bearing case no. 14/93 of Police Station Baldev Nagar, Ambala City. He presented the aforesaid cheque to the State Bank of India, Model Town, Ambala City. The same was returned to him by Registered Post on 23.3.1993 vide Memo. dated 19.3.1993 with the remarks of " insufficient funds." He gave a registered notice calling upon her to make payment of the aforesaid amount within 15 days of receipt of the same. The notice was received back with the remarks of postal authorities that the same had been refused. She failed to make the payment within the aforesaid period. The aforementioned cheque was presented to the above said Bank within a period of six months from the date of its issue. Hence, this complaint.

After recording preliminary evidence, the accused was summoned to appear in the complaint. On her appearance, notice was served upon her under Section 138 of the Act, to which she did not plead guilty and

claimed trial.

In order to substantiate his allegations, the complainant examined CW-1, Anil Kumar Clerk, in addition to his own statement as CW-2 and closed his evidence by tendering various documents.

When examined under Section 313 of the Code of Criminal Procedure, the accused denied the incriminating circumstances appearing in the prosecution evidence against her. She denied having issued the cheque in question to the complainant. She put forth that the alleged cheque was taken away by the complainant from her house in her absence and after filling up the same he has filed this complaint against her. She did not lead any evidence in defence.

After hearing the learned counsel for the parties and examining the evidence, the learned trial Magistrate convicted and sentenced the accused as noticed at the outset. Feeling aggrieved with the judgment/order of sentence, she carried appeal to the Court of learned Sessions Judge, Ambala. The same was dismissed. Undeterred by the judgments of the Courts below, she has preferred this revision.

I have heard Mr. K.K.Aggarwal, Advocate, learned counsel for the petitioner, Mr. Anil Kumar Rathee, learned Assistant Advocate General, Haryana as well as Mr. A.S.Virk, Advocate, learned counsel appearing on behalf of respondent no.2.

Mr. K. K. Aggarwal, learned cousnel appearing on behalf of the petitioner, stressing his every nerve, maintained that the complainant, when appeared as CW-2, admitted that there is no entry in any of the account books regarding withdrawal of Rs.50,000/- nor there is any receipt for advancing the aforesaid amount to the petitioner nor there is any document

including a pronote to show that the amount was advanced to the petitioner. He further puts that it is the complainant's case that the amount was advanced to the petitioner in the presence of Jaswinder Singh and others but neither Jaswinder Singh nor any other person has been produced in the Court to prove the giving and taking of the amount and in these premises, the whole case sands smashed. It is further argued that so far as the issuance of the cheque is concerned, signed blank cheques were lying at the petitioner's residence which was ransacked by the police on account of F.I.R. lodged against her by other persons and when this cheque came in the possession of the complainant, he forged the same for his wrongful gain. He pointed out that Anil Kumar Clerk, CW-1 has admitted that there was no signature of any official of the bank on the objection memo. mentioning "insufficient funds" and furthermore, he has admitted that the writing in the main column of the cheque mentioning as Gurpreet Singh is in different ink and the amount mentioned as Rs.50,000/- only is also in a different writing and these facts clearly show that the cheque was blank and later on the name of the drawee and the amount were filled in. He further pressed into service that F.I.R No. 53 dated 22.4.1993 under Section 406/420 of I.P.C., Police Station Baldev Nagar, Ambala City, regarding which the police had raided the premises of the petitioner has been quashed by this Court. It is further canvassed at the bar that there is delay in filing the complaint, as according to the complainant, he had received the cheque along with endorsement from the bank on 23.3.1993 whereas the complaint was filed on 22.4.1993. To add further to it, there is no evidence to the effect that the petitioner has ever refused to accept the notice alleged to have been sent by the complainant, as according to the complainant himself, the petitioner was

confined in Central Jail, Ambala City.

To tide over the submissions, Mr. Anil Kumar Rathee, learned Assistant Advocate General, Haryana, appearing for the State of Haryana, as well as Mr. A.S.Virk, Advocate, learned counsel appearing on behalf of respondent no.2-complainant, maintained that the learned Courts below have recorded cogent reasons for refuting these contentions and that being so, no interference is called for.

I have well considered the rival contentions.

Gurpreet Singh, complainant, as CW-2 has stated in categoric terms that in January, 1991, he advanced a sum of Rs.50,000/- to the accused as loan on her demand and she had undertaken to repay the same with interest at the rate of 2 per cent per annum in the presence of Jaswinder Singh and two more persons and that she issued a post dated cheque dated 3.2.1993 in his favour and the same was dishonoured. The documentary evidence in the form of chedque, Exh. C-5 cannot be discarded merely because of the fact that Jaswinder Singh or any other witness has not been examined. Section 139 of the Act reads in the following terms :-

> "139. **Presumption in favour of holder.-** It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. "

From a bare reading of the above language of this Section, it is axiomatic that there is a legal presumption that the cheque was issued for discharging an antecedent liability and that presumption can be rebutted

only by the person who drew the cheque. This presumption is in favour of the holder of the cheque. It is not mentioned in the Section that the said presumption would operate only against the drawer. In this behalf, reference may be made to the observations made in re: **Anil Hada** versus **Indian Acrylic Limited,** AIR 2000 Supreme Court 145. There is no dispute with the proposition of law that every presumption is rebuttable. The presumption available under the above mentioned Section can be rebutted by the accused by adducing evidence. So, the burden of proof is on the accused and the evidence available on record will have to be appreciated by bearing in mind the above fact regarding burden of proof.

Reverting back to the facts of the instant case, the petitioner has not let in evidence operating as rebuttal to the presumption arising under Section 139 **ibid**. Sequelly, the doctrine of presumption operates in favour of the complainant that he received the cheque from the petitioner in relation to the discharge of the debt. On behalf of the petitioner, it has been contended that in pursuance of the FIR No.53 dated 22.4.1993 registered under Section 406/420 of I.P.C. at Police Station Baldev Nagar, Ambala City, the residence of the petitioner was ransacked by the police and signed blank cheques came in the possession of the complainant. This argument is too fragile on the face of it to sustain. If her residence was ransacked by the police, by no stretch of speculation, the police officials would have allowed the complainant in their presence to steal away the signed blank cheque. More to the point, the petitioner in the natural course of conduct, could not be expected to keep the signed blank cheque in her house. If it is assumed that she had kept the same, she might have taken away the same with her while leaving her residence or put the same under lock and key. The

petitioner has not examined any handwriting expert to demonstrate that the name of Gurpreet Singh or the amount in the cheque are in different inks and different writing. Anil Kumar Clerk,CW-1 cannot be described to be a handwriting expert. The copy of the FIR No. 53 referred to above, is also not forthcoming on the record.

Gurpreet Singh, complainant as CW-2 has stated in categoric terms that dishonoured cheque was received back by him on 23.1.1993 and he had issued a registered notice to the accused at the address of Central Jail, Ambala, vide postal receipt, Exh. C-7 which was refused by her and was received back by his lawyer. He has proved the registered envelope dated 3.4.1993, Ex. C-11, acknowledgement due receipt, Ex. C-9 and C-10. A glance through his cross-examination would reveal that it has no where been suggested to him that the registered notice was never received by the accused. There being no such suggestion, it has to be inferred that the fact regarding refusal of notice has been admitted by her.

The petitioner had refused to accept notice on 3.4.1993. Section 138 of the Act reads in the following terms :-

> "138. **Dishonour of cheque for insufficient, etc. of funds in the account.-**
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> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount

arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. ”

It is abundantly clear from the above language that the petitioner was obligated to make payment of the cheque amount within 15 days from 3.4.1993 whereas she did not make the same. It implies that on the expiry of 15 days' period, the cause of action arose to the complainant on 18.4.1993. As per the provisions of Section 142 (b) of the Act, the complaint is to be made within one month of the date on which the cause of action arises under clause (c) of the Proviso to Section 138. However, the Proviso appended to Section 142 **ibid** lays down that the cognizance of a complaint may be taken by the Court after the prescribed period i.e. one month, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. Here in this case, the period of limitation for filing a complaint began to run with effect from 18.4.1993 and on reckoning, the complaint could be filed upto 18.5.1993 whereas it was lodged on 22.4.1993. Thus, obviously the complaint is well within limitation.

No other material point has been urged or agitated before me by either counsel.

As a sequel of the above discussion, this revision fails and is dismissed.

(HARBANS LAL)
JUDGE

30th January, 2008
RS